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Statement by Ambassador Zőzimo da Silva

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Mr. Chairman,

The Commission is invited to consider under this item a diversity of questions which express the essential importance of human rights in the area of administration of justice.

Such an importance has been repeatedly reflected in the standard-setting activities developed in the past years, giving way to the adoption of relevant instruments in this field, reaffirming the willingness to bring to reality the respect for the human dignity of the person.

The establishment of an adequate legal framework is in fact an essential step to ensure respect for human rights, since it leads to the recognition of effective safeguards, it contributes to the prevention of further violations and it enables the punishment of those found responsible for these same violations.

Portugal welcomes in this spirit the recent adoption by the General Assembly of the Declaration on the Protection of All Persons from Enforced Disappearance, and expresses the hope that such an important step may decisively contribute to eradicate this phenomenon, which places the persons subjected thereto outside the protection of the law, while inflicting severe suffering on them and on their families.

The adoption of this instrument is a **meaningful reaction of the international community** against the dramatic increasing number of disappeared persons in an also increasing number of States. It furthermore gives an important **guidance for the adoption of national legislation** to prevent and punish acts of enforced disappearance, inter alia,

* by providing for an expeditious habeas corpus procedure, ensuring the right to a prompt and effective judicial remedy as a means of determining the whereabouts or state of health of persons deprived of their liberty

* by ensuring the identification and punishment of those responsible for disappearances and that they are not given immunity from accountability

* by ensuring that enforced disappearances are dealt with by civilian courts, even if those under prosecution are members of the security or armed forces.

In our view, the adoption of this Declaration is also an essential achievement, for the relevance it may have for the activities of the Working Group of this Commission on Enforced or Involuntary Disappearances. The drafting process of this instrument was in fact largely based on its work and took naturally into

consideration the recommendations the Working Group has presented in its. previous reports.

We believe that the time has now come to integrate the Declaration in the methods of work of the Working Group, enabling it to benefit from the legal framework the international community has so widely accepted.

Mr. Chairman,

Following a Resolution adopted by the Commission on Human Rights, the first session of the Working Group entrusted with the task of elaborating a **draft optional protocol** to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment took recently place.

We welcome the important steps taken by the Working Group and we hope its future sessions will enable the establishment of a system of visits to places of detention by a committee of experts. Such a system, being inspired by a wide range of relevant international instruments and acting in close co-operation with other existing mechanisms, will undoubtedly strengthen the prevention of torture.

The adoption of declarations and conventions cannot but reflect the faith in fundamental human rights expressed by Member States of the United

Nations. But for human rights to become a reality for every individual in the world, it is necessary to establish an **effective system of implementation,** capable of ensuring a meaningful protection and adequate safeguards and of creating awareness on the value of the human person.

A system of implementation based on the standards adopted by the United Nations in the field of human rights, and to be used as a common reference at the national and international levels. The reports presented to the Commission under the present item clearly underline the importance of such a consideration.

If we consider the situation of **United Nations staff members, experts and their families** we see that the number of those detained, imprisoned, missing or held in the country against their will is extremely high. This reality takes place, however, when the United Nations are called to play a growing role in peace-keeping operations and to provide humanitarian and emergency assistance to populations at risk.

As the Secretary-General recently pointed out, "Member States should respect and strictly enforce the international legal instruments and undertakings which are meant to protect United Nations staff in the performance of their functions. The courage, commitment

and idealism shown by United Nations personnel should be respected by the entire international community".

In this framework, we share the concerns expressed by the Special Rapporteur of the Sub-Commission as well as her recommendations, namely that in serious cases of arrest or detention of a staff member in manifest violation of human rights in a certain country, consideration should be given to the suspension in that same country of the activities of the concerned organisation, with the exception of those of purely humanitarian nature. Moreover, we welcome the recommendation made that independent boards of inquiry be established to investigate the killings of United Nations officials.

If we want the United Nations to achieve international co-operation in solving international problems and in promoting and encouraging respect for human rights, if we want it to play an increasing role in keeping peace, bringing humanitarian relief and helping building democratic institutions, then we have to be seriously committed to ensure that staff members are able to fulfil their tasks without interference, in conditions of security and with the full observance of human rights.

Mr. Chairman,

The reports of the Working Groups on Enforced Disappearances and Arbitrary Detention and those of the Special Rapporteurs on Extra-judicial, Summary and Arbitrary Executions and on Torture once again emphasise the importance of an **independent and efficient administration of justice** to ensure the identification and punishment of government officials having committed abuses, to enable the thorough investigation of the fate or whereabouts of detainees and to impartially decide on the lawfulness of their deprivation of liberty.

This consideration is in reality a reflect of the principles enshrined in the Universal Declaration of the equality before the law, the presumption of innocence and of the right to a fair trial and public hearing by a competent, independent and impartial tribunal established by law.

The **judiciary** has a decisive responsibility in this regard, forming the last bastion for the protection of the citizen's basic rights. And in reality, as stated by the Special Rapporteur on Torture, the impartiality of the judiciary is at stake if human rights are violated.

It is in fact within the competence of the judiciary to order release of detainees held under conditions which are in flagrant violation of the rules; including when found in incommunicado detention, it is within its competence to refuse evidence which is not freely given or to ensure the protection of a detained person's basic rights, including the right to a legal counsel.

Yet, we are often confronted with situations where judges suffer threats or interferences, pressures or inducements, or where the judicial bodies believe that their impartiality forbids them from taking a stand whenever there is a rift between the authorities and their subjects, who no longer feel protected but rather threatened. As referred in the report on Enforced Disappearances, the judicial authorities are often reluctant to deal with cases of grave violations of human rights, and that is especially the case when military personnel are involved.

And here again the question of **impunity** is at stake. In situations of torture, arbitrary detention, disappearances or extra-legal, summary or arbitrary executions, States have the duty to establish legal accountability, to ensure an open and impartial investigation with a view to identifying and bringing to justice those responsible for human rights violations.

An impartial investigation to be conducted, as referred to by the report on Disappearances, by persons known for their integrity, who are not linked to the Government or the governing party and who have the necessary authority to secure access to documents and files of the armed forces and to investigate any of its members. Otherwise, impunity will continue, since the legal system has shown itself to be unsuitable and ineffective for the punishment of those who commit serious human rights violations.

That is also the reason for my Delegation to consider with the Special Rapporteur on Torture, that the prosecution and punishment of offences constituting a violation of human rights should be dealt with by **civilian courts**, not only for the eminent civil nature of these offences, "but for the fact that military courts could easily concoct a military trial and acquit the defendant."

Mr. Chairman,

In spite of the standards adopted by the international community and of the mechanisms established to strengthen their implementation, the reports under consideration reveal a reality where the worth of the human dignity is disregarded, where the rule of law is replaced by the rule of fear and repression.

The situation prevailing in the occupied territory of East Timor, is such an example, being therefore not surprising that it is often reflected in the reports of thematic rapporteurs and working groups.

Last year, the Commission on Human Rights expressed, by consensus, its serious concern on the human rights situation in East Timor and deplored the massacre occurred in Dili in November 1991 when Indonesian Security personnel violently reacted to a peaceful demonstration, provoking loss of lives and injuries to a large number of civilians and many unaccounted for.

The incidents in Dili were not an isolated event and the overall situation has not improved.

In fact, as Amnesty International recently stated, "there has been no fundamental change in the government's repressive posture toward political dissent, and basic human rights continue to be violated in the name of national security, stability and order. Human rights abuse has become institutionalised in Indonesia and in East Timor."

The same general assessment is reflected in the report on human rights of the US Department of State, which states that "Government's authoritarian rule restricts basic human rights; torture and mistreatment of criminal suspects, detainees and prisoners are

common, and the legal protections are violated by the Government".

In the last session of this Commission, the Indonesian Government committed itself to further **investigate** the action of the security personnel and to **bring to trial** all those found responsible for the violent incident in Dili, as well as to implement the recommendations of the Special Rapporteur on Torture, including the need to give to **civilian courts** the jurisdiction over offences committed by members of armed forces, including the police.

However, no criminal offence was considered, no civilian court intervened, no criminal charges were brought on the grounds of the killings, the disappearances or the torture occurred during and following the massacre. But 10 military personnel were brought before the Military Court, charged for infringements to military ethics and discipline and sentenced to a range of 6 to 18 months in prison. **This attitude cannot but reinforce the prevailing system of impunity!**

Furthermore, no adequate information was provided by the Indonesian Government on the missing persons, acknowledged to be at least 66, while no name has been released and no body returned. According to the US State Department report, "**Government efforts to**

account for those still missing from the November shooting incident were ineffective".

It is therefore not surprising that, as reflected by the Working Group on Disappearances, family members of disappeared persons are reluctant to pursue cases with local authorities, since these "were insufficient and there appear to be little will on the part of the authorities to permit families to avail themselves of the existing remedies" and "family members have allegedly been regularly threatened by persons supposed to be linked to official forces".

Further investigation should therefore be pursued, since the duty of the State to establish legal accountability for disappearances and to account for the fate of the disappeared persists as long as the victim's faith remains unresolved.

And to ensure such investigation to be thorough and impartial, adequate United Nations involvement should be ensured. In fact, as mentioned in the report of the Secretary General on human rights and forensic science, "national mechanisms for the investigation of human rights abuses often fail to obtain conclusive evidence because **they lack the necessary co-operation of certain authorities, particularly where the death may have been caused by the police, the army or agents related to them".** This reality very much applies to the situation occurred in East Timor.

The Indonesian Government also committed itself to ensure that the civilians arrested on the occasion of the massacre are **treated humanely**, those brought to trial are assured proper **legal representation and fair trial** and those not involved in violent activities are **released** without delay.

Yet, torture and mistreatment of criminal suspects, detainees and prisoners are common. According to Amnesty International, in the Dili trials, "defendants were held incommunicado, tortured and pressured to extract confessions", some having been convicted on that basis. And even "defence lawyers were subjected to political pressure from the authorities to ensure that the defendants would be found guilty."

East Timorese not involved in violent activities, who were accused of "expressing hostility towards the Government", "organising peaceful demonstrations" or "disgracing the nation in the eyes of the international community" were **sentenced to prison** terms ranging from nine years to life imprisonment.

As recognised by the US State Department report, **"the trials in Dili did not meet international standards".**

This same attitude of the Indonesian authorities was followed in several other cases. And it is in this framework that the arrest of the leader of the East Timorese resistance movement **Xanana Gusmão,** takes place, being followed by several others including some of his relatives.

Mr. Xanana Gusmão was held incommunicado for more than two weeks before ICRC were able to meet him, and the fear that he might be subjected to torture lead the Special Rapporteur to send an **urgent appeal** on his behalf to the Indonesian authorities.

Indonesia is illegally occupying East Timor, and its authority over the territory is not internationally recognized. Under these circunstances the trial of Xanana Gusmao and, of any other East Timorese currently under detention, falls fully within the relevant provisions of international humanitarian law in particular of the Geneva Convention on protection of civilians in time of war (applicable to East Timor by virtue of its article 2), which entitles Mr. Gusmao and others to a trial complying with international standards of fairness.

The fact is that, however, Mr Xanana Gusmão was not accompanied by a lawyer throughout his interrogation, independent lawyers were not permitted to visit him, his defence lawyer was appointed more than two months after his arrest and just six days

before the trial began, his right to presumption of innocence was not respected and his alleged "recognition" of guilt was broadcast on television showing no respect for his human dignity

As Amnesty International has recognised, in this case, like in so many others, irregularities are not challenged because the detainees are completely denied access or communications with the outside world.

The territory of East Timor is becoming more and more isolated. During the last year, Parliamentary delegations were refused permission, foreign journalists had limited access, the activities of the ICRC experienced increasing difficulty in gaining access to prisoners and human rights organisations, such as Amnesty International, were systematically denied the access.

Also in this field, the Government of Indonesia has failed to honour the commitment undertaken during the last session of the Commission

Mr. Chairman,

This Commission has a special responsibility in the promotion and protection of human rights and it cannot face the atmosphere of fear and tension, the climate of impunity and mistrust prevailing in East Timor, with **silence and passivity.**

Before the serious concern expressed by the last session of the Commission on this situation and the commitments undertaken at that time by the Indonesian Government, before the deterioration of the situation, it is the credibility of the Commission that is in fact at stake.